# SIEMENS

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIN RE

## APPLICATION OF:

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| Inventors: | R. Neuhaus et al. | ) | Group Art Unit: | 2153 |
| | | ) | | |
| Serial No.: | 10/520,700 | ) | Examiner: | Kim, Tae K. |
| | | ) | | |
| Filed: | 1/07/2005 | ) | Confirmation No. | 5200 |

Title: **METHOD FOR UPDATING SERVICES IN COMMUNICATION NETWORKS**

Mail Stop Appeal Brief - Patent
Commissioner For Patents
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COMMISSIONER FOR PATENTS

## APPELLANTS' BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed in this application on March 25, 2008.

(Please proceed to the following page.)

## 1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

## 2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

## 3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims cancelled: 1 - 11, 14, 20-22, 26-28.

Claims withdrawn but not cancelled: None.

Claims pending: 12, 13, 15-19, 23-25 and 29.

Claims allowed: none.

Claims rejected: 12, 13, 15-19, 23-25 and 29.

The claims on appeal are 12, 13, 15-19, 23-25 and 29. A copy of the claims on appeal is attached hereto in the Claims Appendix. Appellants respectfully appeal the final rejection of claims 12, 13, 15-19, 23-25 and 29.

## 4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

Following the Final Office Action mailed 26 December 2007, the Examiner entered the amendment under 37 CFR 1.116 filed on 20 February 2008. In that amendment the subject matter of several cancelled dependent claims was incorporated into independent claims 12, 18 and 25. Although the rejection of these independent claims is maintained per the Advisory Action mailed 19 March 2008, the grounds of rejection presented in the Advisory Action and on appeal herein differ somewhat from what was presented in the Final Office Action.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

5A. BRIEF BACKGROUND PROVIDING CONTEXT FOR THE SUMMARY OF
CLAIMED SUBJECT MATTER

The invention relates to communication networks, e.g., packet-switching networks, containing hardware and software components which use and provide services, wherein a plurality of communication components provide identical software-controlled services. However, when two or more components provide identical services the components may be running different versions of software. In other contexts, two or more components may each be capable of running the identical software but the software is installed on less than all of the components capable of running the software.

Generally, a first communication component may periodically ascertain the services provided in the communication network by other communication components. In cases in which both the first communication component and one or more other of the components provide identical services, the first communication component and the other components can interchange and compare information about the release of the software controlling the provision of the services on each component. If the releases are different, a software update can be initialized in a peer-to-peer network.

If a first communication component needs to activate a particular service in a second communication component but this service cannot be provided by the software on the second communication component -- even though the hardware requirements necessary for this service are in place in the second communication component -- this service can be made available by providing the software or an update of the software to the second communication component.

With at least one communication component providing an up-to-date release, it is possible to ensure that the most up-to-date software version is always present among all software compatible components in the entire communication network. That is, in a peer-to-peer network, with multiple individual components periodically ascertaining and comparing information about presence of software and release information relating to services, e.g., the release dates of

software installed on each component, it becomes possible to reduce the administrative complexity for the communication network. Installations and updates can be quickly, routinely and automatically performed on a peer-to-peer network.

Both client and server components normally comprise computer hardware (for example a PC) which uses appropriate hardware extensions and adapted software to perform appropriate functionalities and provide services. However, the performance of a communication component is frequently dependent on the presence of and release date of the installed software, which means that, in a dynamic environment, updating software which has already been installed or installing software which has not been present on the server component, renders it possible to increase the performance of a communication component and the overall capability of the network.

The computer hardware may normally have more than one software application installed on it, in which case a single physical component in the network may exercise both client and server functionalities. Such communication components are also referred to as servents in the literature, an artificial word derived from the terms "client" and "server".

Conventionally, communication components in packet-switching communication networks exchange data based on a network address assigned to each component. In the networks which interchange data on the basis of the Internet protocol (IP networks), this is the IP address and the IP port number. The network addresses are not always permanently associated with the communication components over time, but rather may be allocated dynamically, such that communication components may each have a different address whenever they have been turned off and turned on again or after predetermined events. For this reason, at least one network component in the known packet-switching communication networks is equipped with an address directory (address database) for all of the communication components which are available in the network. These server components are normally referred to as gatekeepers. Alternately, data interchange without a central address database can be effected using, for example, the "The Gnutella Protocol Specification V 0.4" method. Accordingly, communication components can automatically find other communication components for file interchange and the data exchange takes place directly between the individual components instead of having a central server component or a "gatekeeper". Networks which provide direct data interchange between communication components without a superordinate entity are called peer-to-peer networks. The

communication components which comprise both "client" and "server" functionalities are the aforementioned "servents".

Also conventionally, in a peer-to-peer network based on the Gnutella specification, in order to interchange data between components, a searching communication must acquire the network address of the communication component which holds a file to be obtained. To this end, a first search message, or "ping" is sent out from the searching component. Other communication components which receive the "ping" search message can respond with a hit response, referred to as a "pong". This hit response is an affirmation, containing the respective network address of the responding communication component and the number or names of files which this communication component is able to provide for interchange. In the next step, the searching communication component sends a second search message "Query" to a limited selection of those communication components which have responded with the "pong". The second search message contains the file name of the file which is being sought. If a communication component receives a second search message "Query" but does not itself hold the sought file ready for interchange, it forwards this search message to other communication components in the network whose addresses it has ascertained, for example by means of a "ping" method which has already been carried out in the past. If the communication component can provide the desired file for interchange, however, then it responds to the second search message "Query" with a hit response "Query Hit", as a result of which the searching communication component can initiate the file transfer using commands defined in the Internet protocol. This Gnutella method is used when a particular file is being sought among other communication components. However, the search method is terminated at the very instant at which the sought file has been found for the first time.

Embodiments of the claimed invention are based, in part, on recognition that, while the correct file need only be found once when searching on the basis of the Gnutella method, there is added value to gaining access to a plurality of communication components that provide services of the same type. For example, it may be desirable to choose between components when required to identify and access the files of the component having the most recent software version, or to initiate provision of updates to those components not having the most current version.

Embodiments of the invention are also based, in part, on recognition that the known methods have the following limited feature: although useful data can be interchanged between

communication components there is no guarantee that the software used on the communication components is sufficient for processing the useful data or is sufficiently up-to-date. Generally, in peer-to-peer networks, prior known methods have not so enabled improvement in performance of software-controlled communication components by instituting peer-to-peer comparisons among multiple components. Such comparisons can provide a basis to effect provision or replacement of software installed on one or more communication components.

## 5B. CONCISE EXPLANATION OF SUBJECT MATTER DEFINED IN EACH INDEPENDENT CLAIM

### 5B(i). Summary of Subject Matter Defined In Independent Claim 12

With reference to the detailed description, the following summary references one or more exemplary embodiments described in the Specification and illustrated in the sole figure and which are covered by specific claims, but it is to be understood that the claims are not so limited in scope.

In accord with the figure, **independent claim 12**, directed to a method for updating services, is applicable to a communication network VoIP containing multiple communication components A1- A4, B1-B11, which use and provide the services in the network VoIP. The method includes providing an identical software-controlled service with a plurality of the components A1- A4, B3-B11. See page 5, lines 10 - 16. In the example shown in the figure, other ones of the components, e.g., B1, B2, may be simple telephones with pure client functionality, and still other components A1, A4 each contain, as a server functionality, gateways which connect the packet switching network VoIP to a circuit switching network ISDN, permitting connections between any of the components, A1- A4, B1-B11, and S1 and S2 to which ISDN terminals C1 - C3 are connected. See page 5, lines 18 - 28. Further, for the example shown in the figure, the gateways A1, A4 may be used by the simple client components B1 or B2, or other components in the network VoIP. Accordingly, communication software is installed on all of the exemplary components A1- A4, B1-B11 to provide client functionality. See page 5, lines 30 - 36.

Also in accord with claim 12, at least some of the components, e.g., A1, A4, providing an identical software-controlled service in the communication network are identified. So, for example, with respect to component A3, there can be a search for all gateways to effect communication between A3 and the ISDN terminal C1. See page 6, lines 14-17, 20-24. See, also, page 7, lines 5-8 and lines 14-19.

A comparison of information may then be initiated by one of the components, e.g., A3, to compare release information of software controlling the service on each of the identified components A1, A4 when providing the identical software-controlled service. The comparison may be effected by A3 storing network addresses and access parameters for A1 andA2 in a table. See page 7, lines 8-9 and 19-20. The foregoing example assumes that the two gateways A1, A4 use the same hardware, i.e., have the same ISDN cards for connection to the network ISDN, but may have different releases or versions of control software. See page 8, lines 8-14. Thus, according to the method of claim 12, a software update for one component A1 is initiated when the comparison identifies that the release on that one component A1 is different (e.g., older) from the release on another of the components (A4). See page 8, lines 31-34. That is, software with a more up-to-date release is sent from a third communication component A4 to at least one component A1 found to have an earlier release. As explained at page 8, lines 22-26, the access parameters of A4 may be stored in the table of A2.

Alternately, as described in the example implementation of the method of claim 12, the comparison of information may be initiated by a different one of the components than A3. As described at page 8, lines 16-26, A1 may initiate a search at regular time intervals and acquire network address information and access parameters thereby establishing that the gateway server component function associated with A4 is the same service with the same hardware as its own gateway. See page 8, lines 28-34 which text describes how A1 compares and determines that the release of a gateway foreign to itself (i.e., A4) is more up-to-date. Accordingly, A1 may prompt a download from A4 or any other component to itself.

5B(ii). Summary of Subject Matter Defined In Independent Claim 18

Also in accord with the figure, **independent claim 18**, directed to a method for providing services in a communication network, is, like the method of claim 12, applicable to a

communication network VoIP containing multiple communication components A1- A4, B1-B11. Such services are provided in the communication network with each of multiple communication components A1- A4, B1-B11. See page 5, lines 10 - 16. Some of the components (A1, A4) are capable of providing an identical software-controlled service, e.g., a gateway function or a callback service. See page 7, lines 5-9 and lines 14-19. See also page 9, lines 5-16. According to the method of claim 18, the identical software-controlled service is enabled in a first of the communication components A2. As described at page 9, lines 5-16, the callback service is known on A2. In some embodiments, the component A2 may attempt to activate a call back service on component A3, which service it may not be possible to perform, e.g., because appropriate control software is not yet installed on the component A3. Accordingly, the method of claim 18 further includes activating, or updating software pertaining to, the identical service in a second of the communication components (A3) by downloading software pertaining to the identical service wherein software pertaining to the service is sent from a third communication component (e.g., A1, A4, B3-B11) to the second component. See page 9, lines 22-27.

5B(iii). Summary of Subject Matter Defined In Independent Claim 25.

Also with reference to the figure, the method of **independent claim 25** provides for updating a service in a packet switching communication network VoIP. An identical software-controlled service is provided on a first servent communication component A1 and a second servent communication component A4. See page 4, lines 10-13, 16-19. The components communicate peer-to-peer as is done in a packet switching network. See page 5, line 10. A comparison is initiated by the first of the components A1 to compare release information of the software controlling the service on at least the second component A4 relative to software controlling the service on at least the first component A1 (see page 8, lines 28-30) and if the releases are different, identifying a more up-to-date release installed on one of the communication components, e.g., A4 (see page 8, lines 28-30). Generally, such a software update may be initiated by downloading the more up-to-date release from one of the components, e.g., A2, A3, A4, B3-B11, to another component A1 for which release information has been compared. See page 9, lines 22-27. See page 8, lines 30-34. According to claim 25,

initiating a software update by downloading the more up-to-date release is effected by downloading software from a third servent communication component A2, A3, B3-B11.

## 6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR 41.37(c)(1)(vi)

1. Whether claims 12-16, 18-20, 23 and 24 are unpatentable under 35 U.S.C. Section 102 as being anticipated by WO/55740 (Rangarajan). In view of the statements made of record in the Advisory Action mailed 19 March 2008, it is understood that, nonwithstanding the amendment entered after the final rejection, the rejection of claims 12 and 18 is limited to anticipation by Rangarajan.

2. Whether claim 17 is unpatentable under 35 U.S.C. Section 103 over Rangarajan in view of what is commonly known in the art at the time the pending application was filed.

3. Whether claims 25 - 29 are unpatentable under 35 U.S.C. Section 103 over Rangarajan in view of The Gnutella Protocol Specification v0.4 (Gnutella). In view of the statements made of record in the Advisory Action mailed 19 March 2008, it is understood that, nonwithstanding the amendment entered after the final rejection, the rejection of claim 25 is still under 35 U.S.C. Section 103 over Rangarajan in view of Gnutella.

In view of the Amendment filed under Rule 116 on 20 February 2008 and entered by the Examiner, the grounds of rejection on appeal differ somewhat from the grounds presented in the Final Office Action. The grounds of rejection for claim 12 remain the same as presented in the Final Office Action since the amendment to claim 12 added subject matter of cancelled claim 14, and claim 14 had been rejected on the same grounds as claim 12. However, the grounds of rejection on appeal for claims 18 and 25 differ from what is stated in the Final Office Action. Claim 18 incorporates subject matter of cancelled claim 21 which was rejected on different grounds than claim 18; and claim 25 incorporates subject matter of cancelled claim 28 which was rejected on different grounds than claim 25.

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

Overview of Argument

The claimed invention differs markedly over the prior art. For example, all of the independent claims 12, 19 and 25 apply to packet switching networks having a plurality of communication components providing identical services <u>and</u> wherein the <u>multiple</u> components can interchange and compare information about, for example, software release dates, <u>and</u> when releases differ among components, any one of <u>several</u> components may make an update or an updated version available to another component having an older release date.

In contrast to the above, the Rangarajan reference differs in that it discloses a single file server for making upgrade software available. To clearly present this distinction, the subject matter of canceled claim 14 was incorporated into independent claim 12 in the amendment submitted after final rejection. Similar subject matter to that present in claim 14 (and formerly examined as the subject matter of canceled claim 21) has been incorporated into claim 18; and subject matter of claim 28 (now canceled) has been incorporated in independent claim 25.

In the prior office actions the Examiner had concluded that the subject matter of now canceled dependent claims 14, 21 and 28 was disclosed in the Rangarajan reference. For example, page 7 of the Final Office Action cites page 3, lines 1-5 of the Rangarajan reference for <u>purportedly</u> disclosing subject matter which was construed by the examiner to state as follows:

"a more up-to-date release is sent from a third communication component to a component with an earlier release .... More than one component can have the updated files ..."

Applicant respectfully disagrees with the Examiner's conclusion. The above-recited subject matter is <u>not</u> disclosed in the cited passage and it would be inappropriate to read something into the Rangarajan reference in order to provide subject matter which is simply absent.

This contention that the cited passage is devoid of the requisite disclosure must prevail. As a first reason, it is clear from the passage (page 3, lines 1-5 of Rangarajan) that the context is one in which networking software is referred to as being located on a client computer, wherein a file server enables access to files on the file server. In this context, the reference states that "the file server simply appears to be one or more additional file volumes on the client computer."

None of the foregoing has anything to do with sending "a more up-to-date release" from a third communication component. As a second reason the attempt to read the claim language on the reference is accomplished by finding bits and pieces of claim language as though they are assembled according to the teachings of the appellants - which is not at all the case. Specifically, there is no suggestion in the reference for a third component performing the same task as the disclosed file server.

To facilitate understanding of the differences between each of the independent claims 12, 18 and 25 and the Rangarajan reference, Section 7A includes a brief discussion concerning misapplication of the Rangarajan reference.

## Patentability of Each Claim is to be Separately Considered

Appellant urges that patentability of each claim should be separately considered. All of the claims are separately argued. General argument, based on deficiencies in the rejection of independent claims 12, 18 and 25 under Section 102 or under Section 103 demonstrates patentability of all dependent claims. However, none of the rejected claims stand or fall together because each dependent claim further defines a unique combination that patentably distinguishes over the art of record. For this reason, the Board is requested to consider each argument presented with regard to each dependent claim. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number.

7A. APPELLANTS TRAVERSE ALL REJECTIONS BASED ON THE RANGARAJAN
REFERENCE. PATENTABILITY OF EACH CLAIM SHOULD BE SEPARATELY
CONSIDERED.

7A(1) REJECTION OF THE INDEPENDENT CLAIMS 12 AND 18 UNDER SECTION 102
BASED ON THE RANGARAJAN REFERENCE IS IN ERROR.

BRIEF DISCUSSION OF THE RANGARAJAN REFERENCE

As described in the abstract, the Rangarajan reference concerns making software
available on a file server attached to a network. Methods are disclosed for executing software
over a network and for upgrading software over a network. At best the reference discloses that
which appellants have acknowledged as conventional. For example, the reference describes at
pages 7 and 8, with reference to Figure 2, installation of software on a host machine without
requiring that the underlying files be physically present on storage drives of the same host
machine, as the disclosure describes dynamic downloads fro a remote file server. The reference
does not at all relate to a network of components wherein multiple individual components
interchange and compare information about the release of the software controlling the services.

GENERAL BASIS TO OVERTURN ALL REJECTIONS UNDER SECTION 102

In order to sustain the rejection of independent claims 12 and 18 under Section 102 it is
necessary to clearly identify the particular part of the reference relied upon. As stated in 37 CFR
1.104(c)(2), when a reference is complex or shows or describes inventions other than that
claimed by the applicant, the particular part of the reference relied upon must be designated as
nearly as practical. The Rangarajan reference discloses multiple embodiments and features which
require individual analysis to confirm whether every element in each claim is present.
Unfortunately the rejection addresses multiple different embodiments, including background
prior art, without mapping each feature in the claims to one coherent embodiment of the prior art.
More is required to show anticipation.

7A(1)i REJECTION OF INDEPENDENT CLAIM 12 UNDER SECTION 102 BASED ON THE RANGARAJAN REFERENCE IS IN ERROR.

Application of the Rangarajan reference under Section 102 results in deficiencies that render the rejection of claim 12 incorrect. Claim 12, a method for updating services, relates to a communication network having multiple identified components providing the identical software-controlled service,

"initiating a comparison of information by one of the components to compare release information of software controlling the service on each of the identified components when providing the identical software-controlled service; and
initiating a software update for one component when a comparison identifies that the release on said one component is different from the release on another of the components, wherein software with a more up-to-date release is sent from a third communication component to a component with an earlier release. [Emphasis Added]"

The Rangarajan reference does not at all suggest the claimed subject matter. In particular, claim 12 requires that there be a comparison between "one" component and "another" of the components and that a "third" component send "a more up to date release ... to a component with an earlier release." The claimed arrangement is unique to embodiments in a peer-to-peer network wherein multiple ones of servers present on the network are each capable of comparing releases, and different "third" ones provide the releases to the servers which do not have the most current release. In contrast, because the Rangarajan reference does not provide this capability it is not possible to find the combination of appellants three different components, i.e., the "one" component, the "another" component and the "third" component - each of which has a distinct function according to claim 12. The Examiner may identify a server in the Rangarajan reference which is capable of providing a download, but this is not the invention.

In responding to the appellants' traversals, the Advisory Action merely contends that a local area network comprises a number of client computers connected to one or more file servers. This alone is hardly a basis for concluding (as stated in the Advisory Action) that "Rangarajan anticipates that the software update can be downloaded from a third communication component, which as argued by the applicant could be a second file server to the network."

Even though the Examiner contends that a network may have multiple file servers, there is no prior art which suggests the claimed features with respect to sending more up-to-date releases. For these reasons the rejection of claim 12 under Section 102 must be overturned.

7A(1)ii REJECTION OF INDEPENDENT CLAIM 18 UNDER SECTION 102 BASED ON THE RANGARAJAN REFERENCE IS ALSO IN ERROR.

This rejection of claim 18 is premised on substantially the same basis as the rejection of claim 12. However, the method of claim 18 is directed for providing services in a communication network, rather than a method for updating services in a communication network. With some of the components capable of providing an identical software-controlled service, the method requires

"enabling the identical software-controlled service in a first of the communication components; and

activating, or updating software pertaining to, the identical service in a second of the communication components . . . wherein software pertaining to the service is sent from a third communication component to the second component."

As urged with respect to claim 12, claim 18 cannot be read upon the prior art because it is only the Appellants who disclose distribution of functional features among three different components:

a first of the communication components is enabled

a second of the communication components is activated or updated with software;

wherein it is a third communication component that sends the software to the second component to activate the second component.

The above combination is claimed in the context of an exemplary network wherein multiple servers can each periodically search, e.g., via pings and pongs, for services and updates with the ability of any of multiple network components to cause the download of software. As noted at paragraph [0022] of the application, this feature ensures that the most up-to-date

software version is always present in the entire network, and this reduces the administrative complexity for the network, e.g., in effecting updates and enabling downloads.

The rejection is defective because it is not possible to identify the claimed functionality associated with the first of the communication components, the second of the communication components, and the third communication component. The prior art may disclose multiple components, but not according to the features and ascribed requirements of claim 18. Therefore reversal of the rejection is in order.

7A(2)   THE REJECTION OF CLAIMS 13, 15-16, 19, 23 and 24 WHICH EACH DEPEND FROM CLAIM 12 OR CLAIM 18, UNDER SECTION 102 BASED ON THE RANGARAJAN REFERENCE IS ALSO IN ERROR.

Each of the claims depending from claims 12 and 18 and rejected under section 102 defines distinct and non-obvious subject matter and further distinguishes the invention over the prior art.

CLAIM 13 FURTHER DISTINGUISHES OVER THE ART OF RECORD

Claim 13 requires that "the update is performed by sending software from a component with a more up-to-date release relative to the release on the other of the components." The claim was apparently rejected because the Rangarajan reference (page 7, lines 1-5) downloads an upgrade agent, but the rejection ignores the comparison requirement implicit in this claim, i.e., "relative to the release on the other of the components." This feature is not taught or suggested and in the Rangarajan reference there is no disclosed comparison among multiple ones of the components in order to provide a release "relative to" another release.

CLAIM 15 FURTHER DISTINGUISHES OVER THE ART OF RECORD

The method of claim 15 further distinguishes over the prior art by requiring that "comparison of release information is repeated at regular intervals." The rejection attempts to

equate disclosure at page 7 of the Rangarajan reference with this feature, but the reference, at most, discloses "ascertaining" whether there is an older version "after a predetermined periodof time" which is not the same as doing such at "regular intervals" as required by claim 15.

## CLAIM 16 FURTHER DISTINGUISHES OVER THE ART OF RECORD

The method of claim 16 further distinguishes over the prior art by requiring that "the network includes a packet-switching network." The rejection is based on the mere finding of disc;osure of a packet-switching network in the prior art without recognition that appellants claim a combination of features.

## CLAIM 19 FURTHER DISTINGUISHES OVER THE ART OF RECORD

According to claim 19, the service is provided by the first component. In this context, in order to read claim 18 on the Rangarajan reference it is believed that the file server (see page 6) would have correspond to the first component. However, also as disclosed at page 6 of the Rangarajan reference, this cannot be since it is the user's computer which executes the software. Claim 18 from which claim 19 depends also requires that the service is enabled in the first component. Again, the Rangarajan reference is not consistent with this because the prior art states that it is the user's computer which executes the software. The claim cannot be read consistently upon the prior art and allowance is in order.

## CLAIM 23 FURTHER DISTINGUISHES OVER THE ART OF RECORD

According to clam 23, the first communication component initiates updates of software in the second component and in multiple other communication components. Consistent with the distinction mentioned for claim 19, the Rangarajan reference cannot apply here because the Rangarajan reference discloses that the one server initiates the updates, while claim 18 from

which claim 23 depends requires that the same component is capable of both enabling the service and initiating the update.

## CLAIM 24 FURTHER DISTINGUISHES OVER THE ART OF RECORD

The method of claim 24 further requires the combination of features: wherein the first communication component in the communication network has been provided with a most up-to-date release for operation thereon and for downloading to other components. Again, as argued with regard to claims 19 and 24, the file server of the Rangarajan reference cannot be consistently read upon these requirements.

## 7B REJECTION OF DEPENDENT CLAIM 17 UNDER SECTION 103 IS IN ERROR.

Claim 17 was rejected as unpatentable under 35 U.S.C. Section 103 over Rangarajan in view of what is commonly known in the art at the time the pending application was filed. The claim requires that

"the identical software-controlled service is selected from the group consisting of gateway functionality, voicemail server service, and address server service."

The rejection argues that one skilled in the art would be motivated to update or install software on computers to perform services, but that is not what is claimed. Appellants require a combination wherein a "more up-to-date release is sent from a third communication component to a component with an earlier release." This is not what the Examiner's combination provides. The deficiencies of the Rangarajan carry through to this new combination and the rejection fails to comply with the requirement that every feature must be identified in the prior art.

7C   THE REJECTION OF CLAIMS 25-29 UNDER 35 U.S.C. SECTION 103 OVER
RANGARAJAN IN VIEW OF GNUTELLA IS ALSO IN ERROR.

7C(1) REJECTION OF THE INDEPENDENT CLAIM 25 UNDER SECTION 103 OVER
RANGARAJAN IN VIEW OF GNUTELLA SHOULD BE REVERSED.

The method of claim 25, for updating a service in a packet-switching communication
network, is distinguished over the prior art based on reasons similar for establishing that the
rejection under Section 102 of claim 12 are in error.  The method concerns providing identical
services on "a first servent communication component and a second servent communication
component, the components communicating peer-to-peer ..." Appellants have made of record
the Gnutella reference as part of their disclosure of the prior art which, as explained at paragraph
[0011] of the application, notes that the Gnutella method is terminated at the very instant at
which the sought file has been found for the first time.  Now, simply because the reference was
made of record, the Examiner finds license to combine the features as though any hindsight
combination of two references can be satisfactory to reject a claim under Section 103.  In fact,
the argument is premised on the assertion that as long as the Examiner can find an advantage,
e.g., using servents provides means to decentralize ...(see page 12 of the Final Office Action), a
combination can be legitimized.  Unfortunately the rejection overlooks the deficiencies wherein
the Gnutella method  is terminated at the very instant at which the sought file has been found for
the first time.  This renders the combination inconsistent with the requirement that

"the step of initiating a software update by downloading the more up-to-date release from
said one of the components to another component for which release information has been
compared is effected by downloading software from a third servent communication component."

Two reasons preclude the combination.  First, as noted above, the Gnutella method is
inconsistent with having a third servent effect the download. Because the step of identifying
relates to one of the first and second components, application of the Gnutella method would not
be consistent with having a third servent effect the download.  Second, despite the citations made
in the Final Office Action, the Rangarajan reference is not consistent with having a third servent

component download the software. The Examiner cannot read first, second and third components on the prior art. The rejection must be reversed.

7C(2) THE REJECTION OF CLAIM 29 WHICH DEPENDS FROM CLAIM 25 UNDER SECTION 103 OVER RANGARAJAN IN VIEW OF GNUTELLA SHOULD BE REVERSED.

Claim 29 further distinguishes over the art of record by requiring that the comparison of the release information is repeated at settable time intervals. As already noted with regard to claim 15, the Examiner's proposed citation from page 6, lines 28-33 of the Rangarajan reference does not meet the terms of "settable time intervals" because the cited disclosure does not include time intervals. Allowance is requested.
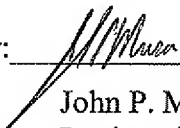
7F. CONCLUSIONS

Argument has been presented to demonstrate that the rejections under Section 102 and Section 103 are deficient and that the dependent claims further distinguish over the prior art. The Examiner has argued rejections when claimed features are absent from the references and not suggested by the prior art. Accordingly, none of the rejections can be sustained. For all of the above argued reasons, all of the rejections should be withdrawn and the claims should be allowed.

8.    APPENDICES

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: _____5/23/08_____           By:_____

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## 9. APPENDIX OF CLAIMS ON APPEAL

12. A method for updating services in a communication network containing multiple communication components which use and provide the services in the network, comprising:

providing an identical software-controlled service with a plurality of the components;

identifying at least some of the components providing the identical software-controlled service in the communication network;

initiating a comparison of information by one of the components to compare release information of software controlling the service on each of the identified components when providing the identical software-controlled service; and

initiating a software update for one component when a comparison identifies that the release on said one component is different from the release on another of the components, wherein software with a more up-to-date release is sent from a third communication component to a component with an earlier release.

13. The method as claimed in Claim 12, wherein the update is performed by sending software from a component with a more up-to-date release relative to the release on the other of the components.

15. The method of Claim 12, wherein comparison of release information is repeated at settable time intervals.

16. The method Claim 12, wherein the network includes a packet-switching network.

17. The method of Claim 12, wherein the identical software-controlled service is selected from the group consisting of gateway functionality, voicemail server service, and address server service.

18. A method for providing  services in a communication network, comprising:

   providing services in the communication network with each of multiple communication components, some of the components capable of providing an identical software-controlled service;

   enabling the identical software-controlled service in a first of the communication components; and

   activating, or updating software pertaining to, the identical service in a second of the communication components by downloading software pertaining to the identical  service from the  first communication component to the second communication component, wherein, wherein software pertaining to the service is sent from a third communication component to the second component.

19. The method as claimed in Claim 18, wherein the service is provided by the first component.

23. (previously presented) The method as claimed in Claim 18, wherein the first communication component initiates updates of software in the second component and in multiple other communication components.

24. The method as claimed in Claim 18, wherein the first communication component in the communication network has been provided with a most up-to-date release for operation thereon and for downloading to other components.

25. A method for updating a service in a packet-switching communication network, comprising:

providing an identical software-controlled service on a first servent communication component and a second servent communication component, the components communicating peer-to-peer;

initiating a comparison by the first of the components to compare release information of the software controlling the service on at least the second component relative to software controlling the service on at least the first component; and if the releases are different,

identifying a more up-to-date release installed on one of the communication components; and

initiating a software update by downloading the more up-to-date release from said one of the components to another component for which release information has been compared, wherein wherein the step of initiating a software update by downloading the more up-to-date release from said one of the components to another component for which release information has been compared is effected by downloading software from a third servent communication component.

29. The method as claimed in Claim 25, wherein the comparison of the release information is repeated at settable time intervals.

10. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

None

## 11. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None